

ADVERTISEMENTS & PUBLIC NOTICES

OVERVIEW

These examination procedures were developed to assist examiners in the review of public notices, advertisements and signs for compliance with applicable consumer protection and civil rights regulatory requirements.

Examination Objective(s)

The objectives of the examination are to:

- Determine whether the financial institution displays all required public notices
- Determine whether public notices, advertisements, and signs comply with applicable regulatory requirements
- Assess whether advertisements are misleading or inaccurate

In This Section

TOPIC	SEE PAGE:
DEFINITION(S)	E-1
GENERAL EXAMINATION PROCEDURES	
Preliminary Assessment	E-2
Lobby Signs and Required Public Notices	E-3
Advertising Media	E-8
WORKPAPER STANDARDS	E-19
REFERENCES	E-20

DEFINITION(S)

Advertisement

For the purpose of these examination procedures, the term “advertisement” refers to any written or verbal message, including:

- Newspapers, magazines, or catalog advertisements
- Brochures, direct mail literature, messages on customer statements, or other printed materials, including applications
- Electronic media including Internet home pages
- Signs, either interior or exterior, and displays
- Radio, television, or public address system broadcasts

DEFINITION(S)
(cont'd)**Advertisement**
(cont'd)

- Oral communications between financial institution employees and actual or potential customers, including telephonic and face-to-face solicitations or response to inquiries

NOTE: Any primary form of advertisement should be included in examination review. Oral disclosures can be reviewed by phoning the financial institution and requesting information (orally); however, if it is found that oral disclosures are not being properly stated, a violation should not be cited, but rather the information should be used to advise management of the need for additional training.

Advertisement
(Regulation Z)

A commercial message in any medium that promotes, directly or indirectly, a credit transaction.

Advertisement
(Regulation DD)

A commercial message, appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account.

Triggering
Terms

Specific terms used in various advertising media that “trigger” additional disclosures.

GENERAL
EXAMINATION
PROCEDURES**Preliminary**
Assessment**General Procedures for Advertisement Media**

1. Determine the types of advertisement media used and types of services or products that have been promoted. Review:
 - Advertising policies
 - Advertisement file
 - Advertising expense records, particularly payments to various media, such as radio, television and newspapers
 - Phone solicitation and radio and television commercial scripts
2. Determine the extent and adequacy of the compliance training received by staff responsible for responding to consumer inquiries and providing loan and deposit product and service information.
3. Determine the extent and adequacy of compliance training received by staff engaged in phone solicitations for various loan and deposit products.
4. Determine the extent and adequacy of the review of advertisements and public notices for compliance with all applicable rules and regulations.

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Preliminary
Assessment
(cont'd)**

5. Determine what audit procedures exist to ensure that all advertisements and solicitations (verbal and written) comply with applicable regulatory requirements.

✓TIP: An awareness of advertisement issues should be maintained throughout the examination process when observing lobby signs or displays and off-premises signs or oral messages which may reference the financial institution.

**Lobby Signs
and Required
Public Notices**

Community Reinvestment Act (CRA)

1. Determine that the appropriate CRA public notice is displayed as required. Refer to Appendix B of Part 345.
(345.44)

Fair Housing

1. Determine that the required Fair Housing Poster, either the Equal Housing Lender poster or HUD's Equal Housing Opportunity poster is:
 - 11 x 14 inches in size
 - Conspicuously displayed in a central location within the bank where deposits are received or residential real estate-related transactions are made (338.4), and
 - The Equal Housing Lender poster contains the correct text in the proper format of 338.4(b) or 24 CFR Part 110.25(a) for HUD's Equal Housing Opportunity poster.

NOTE: The Equal Housing Lender poster and the Equal Housing Opportunity Poster are available both in English and Spanish. Copies of the Equal Housing Lender poster may be obtained by submitting a written request to:

*FDIC P-1 Warehouse and Distribution Center
3501 N. Fairfax Dr
Arlington, VA 22226
FAX: (703) 516-5201*

Copies of HUD's Equal Housing Opportunity poster may be obtained by submitting a written request or calling:

*Fair Housing Information Clearinghouse
P.O. Box 9146
McLean, Virginia 22102
Telephone: (800) 343-3442*

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Lobby Signs and
Required Public
Notices (cont'd)**

Requests for either poster should indicate the number of posters, English or Spanish and the name and address of the financial institution. There is no charge for either poster.

Home Mortgage Disclosure Act (HMDA)

1. If the institution is subject to HMDA reporting, determine that the required notice about the availability of the HMDA Disclosure Statement is displayed in the main office and at each branch located in a Metropolitan Statistical Area (MSA). (203.5(e))

2. Determine if the notice contains one of the following:

- A statement of where the HMDA Disclosure Statement may be obtained
- A statement that the location where the HMDA Disclosure Statement can be obtained will be provided upon request

NOTE: There is no required language for the HMDA Disclosure Statement Availability Notice. See Appendix A to Regulation C for suggested language. The FDIC has developed a poster utilizing the language in Appendix A. Copies of the poster may be obtained by submitting a written request to:

*FDIC P-1 Warehouse and Distribution Center
3501 N. Fairfax Dr
Arlington, VA 22226
FAX: (703) 516-5201*

Requests should indicate the number of posters needed and the name and address of the financial institution.

Advertisement of Membership

NOTE: At the time of revision of this manual, a proposal to amend Part 328 had not yet been adopted. Refer to Proposal to Amend Regulation on Advertisement of Membership (Part 328 of FDIC's Rules and Regulations), Financial Institution Letter # 11-97, dated 2/18/97.

1. Determine that the required official (FDIC) sign is displayed at each station or window where deposits are received.

There are two official signs:

- The official bank sign, which may be used solely by banks (328.2)
- The official savings association sign, which may be used by banks and savings associations (328.4)

GENERAL EXAMINATION PROCEDURES (cont'd)

Lobby Signs and Required Public Notices (cont'd)

NOTE: The institution's charter determines whether the official bank sign or official savings association sign is appropriate.

Display of the official sign at automated teller machines (ATMs) is not required.

2. If required posters, signs, etc. are missing or obsolete, inform management of the availability of these items from the FDIC Warehouse upon request.

"Member FDIC" counter-top and window signs and decals are also available and may be obtained by submitting a written request to:

*FDIC P-1 Warehouse and Distribution Center
3501 N. Fairfax Dr
Arlington, VA 22226
FAX: (703) 516-5201*

Requests should indicate the number of each requested item needed and the name and address of the financial institution.

3. If the financial institution has on-premises investment services or offers municipal securities or retail repurchase agreements (uninsured investment services and products), determine that promotional materials, including lobby signs and brochures, do not mislead consumers as to the product's insured status.

✓TIP: Advertisement of investment products available on financial institution premises which are misleading to a consumer about their uninsured status may require review by Division of Supervision (DOS) staff and a page 1 comment within the compliance report.

Refer to: DOS Memorandum, New Nondeposit Investment Product Examination Procedures, (Subject Classification Number 6300), Transmittal #DOS-97-035, dated 4/14/97, for further information and Financial Institution Letter (FIL-61-95) addressing Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products, dated 9/13/95.

Expedited Funds Availability

1. Determine if funds availability notices are conspicuously posted at locations where employees accept consumer deposits, including proprietary deposit-taking ATMs. (229.18(b) and 229.18(c))

Be aware, however, of the following special rules and exceptions:

- Regulation CC does not require specific language for lobby and ATM notices

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Lobby Signs and
Required Public
Notices (cont'd)**

Refer to Appendix C to Regulation CC for Model Notice Forms.

- Drive-up windows and night depositories do not require the notice
- Special notice requirements apply to proprietary ATMs (see below)

Special Funds Availability Notice for Proprietary ATMs

- Determine if the financial institution displays a notice at each proprietary ATM stating the funds deposited in the ATM may not be available for immediate withdrawal. (229.18(c)(1))
- If the financial institution has off-premise proprietary ATMs from which funds are not collected more than twice a week, determine the institution discloses:
 - The fact that deposits are not removed from the ATM more than two times a week; and
 - The days upon which the deposits made at the ATM will be considered “received”
 (229.18(c)(2))

✓TIP: Disclosures at ATMs are only required for those ATMs at which deposits can be made.

✓TIP: Disclosures at ATMs may be posted on a sign, shown on the screen, or included on deposit envelopes provided at the ATM, as long as the disclosure is given before the customer has made the deposit.

Truth in Lending

- If a sign or lobby board displays lending rates, determine that it includes the disclosures required by Regulation Z. (226.16 for open-end and 226.24 for closed-end)

Refer to examination procedures for Truth in Lending Requirements under the Advertising Media area of this section.

Consumer Leasing

- If a sign or lobby board displays leasing rates, determine that it contains the disclosures required by Regulation M. (213.5)

Refer to examination procedures for Consumer Leasing under the Advertising Media area of this section.

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Lobby Signs and
Required Public
Notices (cont'd)**

Truth in Savings

1. If a sign displays deposit rates, determine that it includes the disclosures required by Regulation DD. (230.8)

Refer to examination procedures for Truth in Savings Requirements under the Advertising Media area of this section.

Special Rule for Indoor Signs

2. Section 230.8(e)(2) provides special requirements for signs inside the premises.

If a sign inside the premises states deposit account rates of return, the following disclosures, at a minimum, must be made:

- The interest rate must be stated as or in conjunction with an “annual percentage yield” or the abbreviation “APY”
- The sign must include a statement advising consumers to contact an employee for further information about applicable fees and terms

NOTE: Indoor signs include advertisements displayed on computer screens, banners, preprinted posters, and chalk or peg boards. Any advertisement inside the premises that can be retained by a consumer (such as a brochure or printout from a computer) is not an indoor sign.

NOTE: If the institution chooses not to comply with the special limited disclosure exception found in Section 230.8(e)(2), then full disclosure of all required terms must be made.

Section 42 – Notice of Branch Closure

NOTE: If the institution operates a branch office, specific guidelines must be followed when closing a branch. Refer to Branch Closing Policy Examination Procedures section of this manual (Part III: G4-1).

1. Determine if the financial institution closed any branches. If so, determine whether the institution posted a conspicuous notice to the branch customers on the branch premises at least 30 days prior to the proposed closing. (42(b)(2)(A))

Equal Credit Opportunity

1. Review lobby signs or other displays which may suggest possible discrimination by the institution on a prohibited basis.

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Lobby Signs and
Required Public
Notices (cont'd)**

2. Determine if loan information provided at one office differs from another. Ask for an explanation of any disparities.

NOTE: Section 202.5(a) of Regulation B, Equal Credit Opportunity, forbids a creditor from making any oral or written statement, in an advertisement or otherwise, to applicants or prospective applicants that would discourage the applicant from making or pursuing an application on one of the prohibited bases found in Section 202.4 of Regulation B.

**Advertising
Media**

Review of Advertising File

1. Review the financial institution's advertisements since the previous examination. If the file is voluminous, select a sampling of advertisements.
Select sampling based upon:
 - Product and service type (open-end credit plans, real estate loans, other closed-end loans, leases, deposit services, etc.)
 - Media used (television, newspaper, radio, etc.)
2. Determine if the financial institution reviews advertisements for compliance with applicable regulatory requirements. Assess effectiveness of the institution's compliance review procedures based upon a sampling of the advertising file.

Fair Housing

1. If a printed advertisement of a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling is used, determine whether the Equal Housing Lender or Equal Housing Opportunity logotype and legend are appropriately used.

NOTE: The Equal Housing Lender (symbol of house) with legend (the phrase "Equal Housing Lender") or the Equal Housing Opportunity (symbol of house) with the legend (the phrase "Equal Housing Opportunity") must be used together, respectively. (338.3)

NOTE: This section may be satisfied in an oral advertisement by stating "Equal Housing Lender" or "Equal Housing Opportunity."

Additional guidelines on the use of the legend and size requirements for the logotype may be found within the Department of Housing and Urban Development's Fair Housing Act's implementing regulation.

GENERAL EXAMINATION PROCEDURES (cont'd)

Advertising Media (cont'd)

2. Review home loan advertising content to determine whether any preference is indicated for a particular segment of the community resulting in the possible discouragement of other applicants on one of the prohibited bases found in Regulation B and the Fair Housing Act. (338.3(b))

Advertisement of Membership

1. Determine if the official advertisement statement "Member FDIC" is properly included in print and broadcast (television, radio) advertisements. (328.3)

*NOTE: There are many exceptions to this rule. The official advertising statement is **not required** for non-deposit advertisements, such as advertisements for loans and trust services.*

NOTE: At the time of revision of this manual, a proposal to amend Part 328 had not yet been adopted. Refer to Proposal to Amend Regulation on Advertisement of Membership (Part 328 of FDIC's Rules and Regulations), Financial Institution Letter # 11-97, dated 2/18/97.
2. Section 328.3(c) lists the following types of advertisements that **do not require** the "Member FDIC" disclosure:
 - Statements of condition that are required by law to be published
 - Printed forms and supplies such as stationary, envelopes, checks, certificates of deposit
 - Financial institution signs in the lobby or attached to the building
 - Listings in directories (not advertisements)
 - Advertisements that do not include the financial institution's name
 - Display advertisements in a financial institution's directory where the institution's name and its FDIC membership are listed elsewhere in the directory
 - Joint or group advertisements of banking services which list other involved financial institutions
 - Radio or TV advertisements which do not exceed 30 seconds in time
 - Promotional items such as pens, calendars, and matchbooks that make such disclosure impractical
 - Advertisements that contain a statement to the effect that the financial institution is a member of the FDIC or that deposits are insured by the FDIC up to \$100,000 per depositor
 - Advertisements for non-deposit products, such as loans
 - Safe deposit advertisements
 - Trust services advertisements
 - Advertisements for real estate services
 - Advertisements for armored car services
 - Advertisements related to service charges or analysis charges
 - Securities advertisements
 - Travel service advertisements including traveler's checks
 - Savings bank life insurance advertisements

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

3. If the official advertisement statement “Member FDIC” is in a language other than English, determine whether prior written approval of the translation was obtained from the FDIC. (328.3(e))

Uninsured Investment Services and Products

4. Determine if the financial institution offers:

- On-premise investment services
- Municipal or other securities
- Retail repurchase agreements

If so, determine that the promotional materials, including lobby signs and brochures, do not indicate that these products are covered by FDIC Deposit Insurance or otherwise mislead consumers as to the product’s insured status.

NOTE: Consult with the Division of Supervision (DOS) on investment product advertising that may mislead consumers to believe that such products are covered by Federal Deposit Insurance. If after consultation with DOS the determination is made that the advertising is or may be misleading, a comment should be included on this topic in the Page 1, Examiner’s Comments and Conclusion page.

Refer to DOS Memorandum, New Nondeposit Investment Product Examination Procedures (Subject Classification # 6300), Transmittal #DOS-97-035, dated 4/14/97, and Financial Institution Letter (FIL-61-95) addressing Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products, dated 9/13/95, for further guidance and instructions on this topic.

Truth in Lending

Open-End Credit

1. Determine that advertisements for open-end credit comply with the requirements listed below:
- The advertisement shall state only those terms the institution is prepared to offer (226.16(a))
 - Loan rates must be expressed as an “annual percentage rate” or “APR” (226.14(b))
 - Advertisements for variable-rate consumer credit products must disclose that the APR may increase after consummation (226.16(b)(2))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

“Triggering” Terms
<p>2. Determine if any open-end credit advertisement contains one of the following “triggering” terms:</p> <ul style="list-style-type: none"> • A statement of when the finance charge begins to accrue, including the “free ride” period (if any) Examples: “Up to 30 days of free credit if you pay in full each month” or “We charge interest from the date we receive notice of your purchase” • The periodic rate used to compute the finance charge or the APR Examples: “Less than 1.5% per month” or “14% APR” • The method used to determine the balance on which a finance charge is computed Examples: “A small monthly service charge on your remaining balance each month” or “Interest will be charged on your average daily balance each month” • The method used to determine the finance charge, including a description of how any finance charge other than the periodic rate will be determined Examples: “You only pay \$1.00 each time you write an overdraft check” or “Minimum finance charge of \$.50 per month” • The amount of any charge other than a finance charge that may be imposed as part of the plan Example: “There is a \$25 annual membership fee to get your card”
<p>3. If the advertisement contains one of the above “triggering” terms, then all of the following additional disclosures must be made:</p> <ul style="list-style-type: none"> • Any minimum, fixed, transaction, activity, or similar charge • Any periodic rate that may be applied, expressed as an “APR” • Any membership or participation fee <p>(226.16(b))</p>
Special Disclosure Rules for Open-End Variable-rate Credit Plan Advertisements Containing “Triggering” Terms
<p>4. If an advertisement for an open-end variable-rate credit plan contains one of the “triggering” terms listed above, then the advertisement must also disclose the existence of any variable-rate feature.</p>
<p>5. In disclosing the APR for a variable-rate plan, the creditor may:</p> <ul style="list-style-type: none"> • Use an insert showing the current rate • State the APR as of a specified recent date • Provide an estimated APR along with an explicit statement that the rate disclosed is an estimate

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

The estimate must be based on the best information reasonably available at the time of the advertisement.

(226.16(b)(2) and Official Staff Commentary)

**Special Disclosure Rules for Discounted Variable rate
Open-End Plan Advertisements**

6. If an advertisement for a discounted variable-rate plan contains a “triggering” term, the advertisement must include, in addition to the other required information:

- The introductory APR (with a statement as to how long it will remain in effect)
- The current indexed rate (with a statement that this second rate may vary)

NOTE: To show the current indexed rate for a discounted variable-rate plan, the financial institution should follow one of the options listed below as set forth in Section 226.16(b)(5) of the Official Staff Commentary:

-- Use an insert showing the current rate

-- State the APR as of a specified recent date

-- Provide an estimated APR along with an explicit statement that the rate disclosed is an estimate

The estimate must be based on the best information reasonably available at the time of the advertisement.

(226.16(b)(2) and Official Staff Commentary)

Special Disclosure Rules for Credit and Charge Cards

Direct Mail, Telephone, and Other Solicitation Disclosures

7. Perform FI CC Issuer, Not Creditor “Before Account Opening” procedures 3 through 5 from Open-End Credit section of this manual (Part III: B2-1).

Special Disclosure Rules for Home Equity Loans

General Home Equity Plan Disclosure Requirements

8. Determine if an open-end home equity credit advertisement contains any of the following terms:

- Terms required to be disclosed under Section 226.6(a) or 226.6(b)
- The payment terms, set forth either affirmatively or negatively

If so, determine that the additional disclosures listed below are made:

- Any loan fee that is a percentage of the credit limit under the plan, and an estimate of all other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

- Any periodic rate used to compute the finance charge, expressed as an annual percentage rate
- The maximum annual percentage rate that may be imposed in a variable-rate plan

(226.16(d)(1))

NOTE: For the purpose of Section 226.16(d), “payment terms” include such terms as the length of the draw period, the repayment period, how minimum periodic payments are determined and the timing of such payments.

- **Examples:** “Only \$100 per month in our home equity plan” or “Up to ten years to repay”

“Payment terms” may be expressed either in the affirmative or the negative.

- **Examples:** “Annual membership fee of \$40” and “No membership fees.”

Discounted Open-End Home Equity Credit Disclosures

9. Determine if an advertisement states an initial APR that is not based on the index and margin used to make later rate adjustments in a variable-rate plan.

If so, the advertisement must also include:

- Introductory rate and how long it will be in effect
- With equal prominence to the initial rate, a reasonably current APR that would have been in effect using the index and margin

(226.16(d)(2))

Additional Home Equity Disclosure Requirements

10. Determine that additional home equity disclosure requirements have been complied with, as applicable:

- Minimum monthly payments

If minimum monthly payments are disclosed, the advertisement must also disclose that a balloon payment may result, if applicable.

(226.16(d)(3))

- Tax deductibility

Open-end home equity credit advertisements which state that any interest expense incurred under the home equity plan is or may be tax deductible may not be misleading. (226.16(d)(4))

- Misleading terms

Open-end home equity credit advertisements cannot use misleading terms which would include reference to a home equity plan as “free money”. (226.16(d)(5))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

TIL Closed-End Credit
<p>1. If the advertisement presents information on available closed-end credit, determine that required information is present for compliance with Regulation Z, as follows:</p> <ul style="list-style-type: none"> a. Credit terms mentioned within an advertisement should only be those terms the financial institution is prepared to offer. (226.24(a)) b. The advertised consumer loan rates should be expressed as “annual percentage rates” or “APRs”. (226.24(b)) c. Advertisements for variable-rate consumer credit should disclose that the APR may be increased after consummation. (226.24(b)) <p>(226.24)</p>
“Triggering Terms”
<p>2. Determine if the closed-end credit advertisement includes any of the following “triggering” terms:</p> <ul style="list-style-type: none"> • Amount or percentage of any down payment Examples: “10% down,” “\$1,000 down,” “90% financing,” or “trade-in with \$1,000 appraised value required.” However, “no down payment” or “low down payment accepted” are not considered triggering terms. <i>NOTE: The amount or percentage of any down payment is only a triggering term for the bank if the bank is both the seller and the lender in the transaction.</i> • Number of payments or the period of repayment Examples: “Up to four years to pay,” “48 months to pay,” or “30-year mortgages available.” However, “take years to repay,” “pay weekly,” or “monthly payments arranged” are not considered triggering terms. • Amount of any payment expressed as either a percentage or dollar amount Examples: “Monthly payments less than \$250 on all our loan plans,” “pay \$23.44 per \$1,000 amount borrowed,” or “\$210.95 per month.” However, “easy monthly payments” or “regular monthly payments” are not considered triggering terms. • The amount of any finance charge Examples: “Financing costs less than \$300 per year,” “less than \$1,200 interest,” or “\$2.00 monthly carrying charge.” However, “no closing costs” or “financing available” are not considered triggering terms. <p>(226.24(c)(1))</p>

GENERAL EXAMINATION PROCEDURES (cont'd)

Advertising Media (cont'd)

3. If the advertisement contains one of the “triggering” terms listed above, the advertisement must also disclose **all** of the following:

- Amount or percentage of the downpayment
- Terms of repayment
- The APR

If the annual percentage rate may increase after consummation of the credit transaction, that fact also must be stated.

(226.24(c)(2))

Special Closed-End Credit Advertising Issues

4. Determine that advertisements for a reduced simple interest rate as a result of a buydown also include the following disclosures:

- The period the rate will be in effect
- The simple interest rate for the remainder of the loan
- The APR

Refer to Official Staff Commentary to Regulation Z, Section 226.24(b)

NOTE: A buydown may be described as when a consumer or third party (such as a seller) or both pay an amount to the creditor in order to reduce the consumer's payments or “buy down” the interest rate for all or a portion of the credit term.

5. Determine that any advertisement that shows a lower payment or effective rate in the early years for loans that have a graduated payment plan also shows:

- The term of the reduced payments
- The interest rate upon which the reduced payments are calculated (“effective” or “payment” rate)
- The “note rate” at which interest is actually accruing
- The APR

Refer to Official Staff Commentary to Regulation Z, Section 226.24(b)

6. Determine that an advertisement for credit with a discounted variable-rate feature states the reduced initial rate, provided the limited term to which the reduced rate applies is shown.

NOTE: Any limits or caps on periodic rate or payment adjustments need not be stated. The effect of any discount on the payment schedule for the discount period can be shown in an advertisement without triggering additional disclosures. When an advertisement for a discounted variable-rate loan contains triggering terms that require disclosure of all payment amounts for the duration of the loan, then all payments (including initial discount period and remaining period to maturity) which can be determined before consummation must be stated.

Refer to Official Staff Commentary to Regulation Z, Section 226.24(b)

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

Consumer Leasing
<p>1. If the advertisement presents information on available leasing plans, determine that information required by Regulation M is provided. (213.7)</p> <p>2. Determine if a consumer lease advertisement includes any of the following “triggering” terms:</p> <ul style="list-style-type: none"> • The amount of any payment; or • A statement of any capitalized cost reduction or other payment required prior to or at consummation or by delivery, if delivery occurs after consummation. <p>If so, the advertisement must also disclose all of the following:</p> <ul style="list-style-type: none"> • A statement that the transaction advertised is a lease • The total amount due at lease signing or delivery, whichever occurs later (213.7(d)(1)) <p><i>NOTE: This amount may exclude third-party fees, such as taxes, licenses, and registration fees and disclose that fact.</i></p> <ul style="list-style-type: none"> • The number, amounts, and due dates or periods of scheduled payments under the lease • A statement of whether or not a security deposit is required • A statement that an extra charge may be imposed at the end of the lease term where the lessee’s liability (if any) is based on the difference between the residual value of the leased property and its realized value at the end of the lease term <p>(213.7(d)(2))</p> <p>Examples of “triggering” terms include:</p> <ul style="list-style-type: none"> • The amount of any payment (“pay a mere \$128 per month”) • The number of required payments (“\$133 per month . . . 36 month lease” or “low monthly payments on four-year auto lease”) • A statement that any downpayment or no downpayment, or other payment, is required at the beginning of the lease (“lease now and make no payments for three months” or “only a small downpayment”) <p>(213.7)</p>

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

Television or Radio Broadcast

3. Determine whether a “triggering” term for a consumer lease is stated within a consumer lease advertisement by radio broadcast.

If so, other disclosures may be limited to the following:

- A statement that the transaction advertised is a lease
- The total amount due at lease signing or delivery, whichever occurs later
- The number, amounts, and due dates or periods of scheduled payments, and the total of these payments under the lease
- A referral to either a toll-free telephone number for further information, or a written publicly circulated advertisement, including the name and the date of the publication, which includes information required to be disclosed

NOTE: The toll-free telephone number shall be available for no fewer than ten days, beginning on the date of the broadcast. The written advertisement shall be published beginning at least three days before and ending at least ten days after the broadcast.

(213.7(f))

Truth in Savings

1. If the advertisement presents information on available deposit services, determine that prescribed information is present for compliance with Regulation DD. (230.8)
2. If any advertisement for a deposit account contains the phrase “free,” “fees waived,” or “no cost,” determine that this type of account does not have any activity or maintenance or similar charge. (230.8(a))

NOTE: If a deposit account is linked to another required deposit account, as a savings account being necessary before a customer can open a transaction deposit account, the linked account must also be considered for any associated activity or maintenance charges to determine appropriateness for advertising as “free” or “no cost”.

Examples of disqualifying types of maintenance and activity fees include:

- Any fee imposed when a minimum balance requirement is not met, or when consumers exceed a specified number of transactions
- Examples:** “\$.25 fee on each transaction over six in any statement period” or “\$10.00 monthly fee on accounts which do not maintain a \$1,000 minimum balance”
- Transaction and service fees that consumers reasonably expect to be imposed on a regular basis
 - A flat fee, such as a monthly service fee

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

- Fees imposed to deposit, withdraw, or transfer funds, including per-check or per-transaction charges

Examples: “\$.25 for each withdrawal, whether by check or in person”

NOTE: Use of the terms “free” or “no cost” can be used in reference to a specific account service or if a service is free for a limited time or under special conditions not related to a deposit account as long as it is not misleading. For example, “checking accounts are free of deposit or withdrawal fees,” “free checking accounts for one year,” or “free NOW accounts for persons 65 years in age or older”.

3. Determine that the word “profit” is not used with reference to interest paid on an account. (230.8(a))

4. If the advertisement states a rate of return, determine that it uses the term “annual percentage yield”. (230.8(b))

NOTE: The abbreviation “APY” is permissible only if the term “annual percentage yield” is stated at least once in the advertisement.

5. If the advertisement uses the term “interest rate”, identify whether it is used in conjunction with, and not more conspicuous than, the annual percentage yield. (230.8(b))

6. If the advertisement identifies “tiered rate” accounts using APY, then it must also present the APY for each tier, as well as the corresponding minimum balance requirements. *Refer to Official Staff Interpretations to Regulation DD, Section 230.8(b).*

7. If the advertisement identifies interest rates for “stepped rate” accounts, then it must also state all the interest rates and the time period that each rate is in effect. *Refer to Official Staff Commentary to Regulation DD, Section 230.8(b).*

8. Determine that advertisements which state an APY also state the following in a clear and conspicuous manner, unless excluded by Section 230.8(e):
 - Advertisements for variable-rate accounts must include a statement that the rate may change
 - The effective time period for an APY, for example, “offered until December 31” or “effective as of June 30”
 - Any minimum balance required to obtain the APY
 - Any minimum balance to open the account if it is greater than the balance necessary to obtain the APY
 - Any maintenance or activity fees that could reduce earnings on the account, for example, “withdrawal fees of \$1.00 per transaction are not included with the stated APY”
 - For time accounts, the term of the account and a statement, if applicable, that a penalty will or may be imposed for early withdrawal
 (230.8(c))

**GENERAL
EXAMINATION
PROCEDURES
(cont'd)**

**Advertising
Media (cont'd)**

9. Determine that advertisements which state that a bonus will be given also state, unless excluded by 230.8(e):

- The APY
- The time requirement to obtain the bonus
- The larger of the minimum balance required to obtain a bonus or the minimum balance required to open the account
- When the bonus will be provided

(230.8(d))

10. When an APY or bonus is advertised, other disclosures are also required.

However, Section 230.8(e)(1) limits the number of additional disclosures for broadcast or electronic media (for example, radio and television), outdoor media such as billboards, or telephone response machines to the following:

- The minimum balances to obtain the advertised annual percentage yield
 - The term of time accounts
 - Information relating to any bonus being advertised to include time required to obtain the bonus and minimum balance required to obtain the bonus

11. Determine that the annual percentage yields and deposit interest rates are rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. (230.3(f)(1))

Equal Credit Opportunity

Review individual advertisements for content which may be misleading or suggest discriminatory practices by the institution on a prohibitive basis.

NOTE: Section 202.5(a) of Regulation B forbids a creditor from making any oral or written statement, in advertising or otherwise, to applicants or prospective applicants that would discourage on a prohibited basis a reasonable person from making or pursuing an application for credit.

**WORKPAPER
STANDARDS**

Appropriate workpapers must be completed when reviewing advertisement media for compliance. Refer to Standardized Workpapers, Appendix K, in this Manual.



**FDIC LAW,
REGULATIONS
& RELATED
ACTS**

Applicable Rules

Consumer Credit Protection Act, Chapter 3 – Credit Advertising, Volume 2, Page 6588.13

Equal Credit Opportunity Act, Volume 2, Page 6610.16

Fair Housing Act, Volume 3, Page 8201

Fair Housing Regulations, Volume 3, Page 9633

Home Mortgage Disclosure Act of 1975, Volume 3, Page 8687

Part 328 – Advertisement of Membership, Volume 1, page 2297

Part 329 – Interest on Deposits, Volume 1, Page 2311

Part 338 – Fair Housing, Volume 1, Page 2647

Part 345 – Community Reinvestment Act, Volume 1, Page 2781

Regulation C – Home Mortgage Disclosure Act, Volume 3, Page 7553

Regulation CC – Availability of Funds and Collection of Checks,
Volume 3, Page 7889

Regulation DD – Truth in Savings, Volume 2, Page 7429

Regulation M – Consumer Leasing, Volume 2, Page 6685

Regulation Z – Truth in Lending, Volume 2, Page 6641

Truth in Lending Act, Volume 2, Page 6565

Truth in Lending Official Staff Commentary, Volume 2, Page 6871

Truth in Savings Act, Volume 3, Page 8550.10

**Advisory
Opinions**

Advertisement for “No Fee” Checking Account Violates Truth in Savings Act if a Fee is Imposed When Minimum Balance is not Maintained, Letter #95-31, Volume 2, page 4958

Advertisement of FDIC Insurance by Savings Associations, Letter #89-24, Volume 2, page 4406.01

Advertisements Soliciting Deposits and Non-Deposit Obligations Should Clearly State Which Investments Are Insured, Letter #93-2, Volume 2, page 4712



**FDIC LAW,
REGULATIONS
& RELATED
ACTS (cont'd)**

**Advisory
Opinions
(cont'd)**

Advertising the Solicitation of Deposits, Letter #87-2, Volume 2, page 4245
Display of Official Deposit Insurance Signs, Letter #92-20, Volume 2, page 4622

“Federal Deposit Insurance Corporation” Should not be Translated into Non-English Equivalent on Advertising, Letter #95-12, Volume 2, page 4924

Guidelines for Advertising of Insured Status by Savings Associations, Letter #91-60, Volume 2, page 4569

Night Depositories and Official Bank Signs, Letter #94-17, Volume 2, page 4852

Official Bank Sign Need not be Displayed on Night Depositories, Letter #93-42, Volume 2, page 4777

Official FDIC Sign Need not be Black or Gold, but Text and Symbol, Letter #92-15, Volume 2, page 4616

Posting FDIC Signs in Embassy Branches, Letter #88-78, Volume 2, page 4378

Regulation DD: Sufficiency of Proposed Disclosures of Annual Percentage Yields for Tiered-rate Accounts, Letter #93-56, Volume 2, page 4792

Regulation DD – Tiered-Rate Accounts and Disclosure Statement Requirements, Letter #93-67, Volume 2, page 4809

Regulation DD, Truth in Savings: Disclosures in Advertisement Soliciting Deposits, Letter #94-54, Volume 2, page 4908

Savings Association Display of Official Eagle Logo, Letter #89-33, Volume 2, page 4414

Savings, Loan and Mortgage Charts Listing Both Insured and Uninsured Institutions Need not Include Official FDIC Advertising Statement, Letter #90-77, Volume 2, page 4510

Sign Intended as Supplement to Official Savings Association Sign may not be Displayed Because too Similar, Letter #92-70, Volume 2, page 4681

Size and Design of Official Bank or Savings Association Logo Placed at Teller Windows May not Vary from Requirements of 12 C.F.R. Section 328.1, Letter #91-29, Volume 2, page 4541

Technical Questions Concerning Display of Official FDIC Logo in Banks, Letter #90-64, Volume 2, page 4495

Whether an Insured Depository Institution Can Operate Branch Under a Name that is Different Than That of the Insured Institution, Letter #96-7, Volume 2, page 4975

Whether FDIC Logo may be Displayed on Lapel Pin Worn by Bank Employees, Letter #92-22, Volume 2, page 4623



**FDIC LAW,
REGULATIONS
& RELATED
ACTS (cont'd)**

**Statements of
Policy**

None

**DCA
MEMORANDA**

None

**FINANCIAL
INSTITUTION
LETTERS (FIL)**

Fair Housing Regulation – FDIC Finalizes Fair Housing Regulation (Part 338 of FDIC's Rules and Regulations), Letter #67-97, dated 7/14/97

Consumer Leasing Act – Amendments to the Consumer Leasing Act, Letter #36-97, dated 4/17/97

Advertisement of Membership – Proposal to Amend Regulation on Advertisement of Membership (Part 328 of FDIC's Rules and Regulations), Letter #11-97, dated 2/18/97

Interpretations of the Interagency Statement on Retail Sales of Nondeposit Investment Products, Letter #61-95, dated 9/13/95

Fair Housing: Revised Poster Required to Be Displayed, Letter #1-95, dated 1/6/95

Pamphlet on Home Mortgage Lending and Equal Treatment, Letter #19-92, dated 3/16/92

OTHER

DOS Memorandum, New Nondeposit Investment Product Examination Procedures, (Subject Classification Number 6300), Transmittal #DOS 97-035, dated 4/14/97
